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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,118	06/20/2003	William W. Cimino	40206.19US01	9143
23552	7590	05/26/2006		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER WILLIAMS, CATHERINE SERKE				
ART UNIT			PAPER NUMBER	
3763				

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,118

Applicant(s)

CIMINO, WILLIAM W.

Examiner

Catherine S. Williams

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

The previous restriction requirement mailed 9/19/05 has been withdrawn in light of applicant's remarks dated 2/21/06. All of the originally filed claims have been treated on the merits below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Wheeldon et al (USPN 4,670,007). Wheeldon discloses a strain gauge sensor (2), a container of sterile fluid (3), a peristaltic pump (7), a sterile tubing set (4), a processor (30) and a display (10). See figure 1 and 3:49-56; 4:22,35-39,63-5:11; 5:18-33; and 5:37,46-47,63-64. The device is capable of being used during any type of surgical procedure that would require IV administration of fluids including a cosmetic procedure such as lipoplasty. Regarding the pump, the pump has an adjustable speed control based on the weight of the fluid container. The speed control is considered capable of delivery of fluid within any range set by the user including 30 ml/min to 1000 ml/min.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-13, 15-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeldon. Wheeldon discloses a strain gauge sensor (2), a container of sterile fluid (3), a peristaltic pump (7), a sterile tubing set (4), a processor (30) and a display (10). See above rejection for claim 1.

Wheeldon does not disclose a method for accurately delivering sterile fluids for use in a cosmetic surgery such as lipoplasty of breast implantation that includes a pump that deliver fluid within the range of 30 ml/min to 1000 ml/min.

However, at the time of the invention, it would have been obvious by one skilled in the art to use the device of Wheeldon in any procedure, including any cosmetic surgery procedure such as lipoplasty, that requires the controlled delivery of fluid and it would have been obvious to use a pump at any flow rate that was required for that procedure. The device of Wheeldon discloses a device for delivering fluid and the thrust of the invention is the control feedback from the sensor measuring the weight of the sterile fluid and the pumping flow rate. The prior art is concerned with having this feed back control in order to maintain sterility of the fluid tubing. These objectives are applicable in any surgical procedure and any desired flow rate. Furthermore, the device of Wheeldon enables a user to select a desired rate for fluid delivery.

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Claims 5,8,14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeldon. Wheeldon meets the claim limitations as described above for claims 1 and 10. Wheeldon does not teach the tubing set being made of polyvinyl chloride.

However, at the time of the invention, it would have been obvious by one skilled in the art to make the tubing set from polyvinyl chloride. Applicant has not disclosed that PVC solves a problem, is used for a particular purpose or provides an advantage. Furthermore, PVC is well known in the art of fluid delivery for medical purposes and would have been chosen for its excellent ability to withstand sterilization before use.

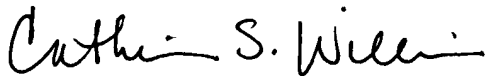
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 571-272-4970. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Catherine S. Williams

May 23, 2006